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2 United States Attorney

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4 **FILED**

5 NOV 27 2001

6 RICHARD W. WIEKING
7 CLERK, U.S. DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 **CR 01 20179**

14 UNITED STATES OF AMERICA,

No.

15 Plaintiff,

16 v.

17 VIOLATIONS: 17 U.S.C. § 506(a)(1) and
18 18 U.S.C. § 2319(b)(1) – Copyright
19 Infringement; 18 U.S.C. § 1343 – Wire
20 Fraud; 18 U.S.C. § 1341 – Mail Fraud

21 ERIC JAMES NIEMI,
22 a/k/a Scott Falco,
23 a/k/a Erik Knight,
24 Defendant.

25 SAN JOSE VENUE

26 INDICTMENT

27 The Grand Jury charges:

28 BACKGROUND

1. On or about and between December 13, 1999 and July 9, 2001, both dates being approximate and inclusive, in the Northern District of California, and elsewhere, the defendant

ERIC JAMES NIEMI,
a/k/a Scott Falco,
a/k/a Erik Knight,

did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises.

INDICTMENT

1 2. The scheme and artifice to defraud was carried out in the following manner:

2 a. Defendant registered under different aliases with an online auction company,
3 eBay, Inc., which is located in San Jose, California.

4 b. Defendant offered to sell on eBay copies of computer software programs
5 developed and manufactured by Adobe Systems, Inc. ("Adobe") located in San Jose, California,
6 including the following programs: Adobe Photoshop 5.0, Adobe Pagemaker 6.5, and Adobe
7 Premiere 5.1, among others.

8 c. Defendant represented on eBay that the Adobe programs he was offering to
9 sell were legitimate copies of the software programs, not counterfeit or infringing copies of the
10 programs.

11 d. As a result of his offers and representations, defendant caused certain eBay
12 users to place bids for purchase of the Adobe software programs.

13 e. Defendant contacted certain bidders by e-mail and instructed them to mail a
14 money order for the sale amount to one of several post office boxes used by the defendant. During
15 certain transactions, defendant engaged in e-mail correspondence with potential purchasers and made
16 additional representations about the source and legitimacy of the software he was selling.

17 f. Defendant failed to disclose the material fact that he did not intend to provide
18 purchasers legitimate copies of Adobe software and instead intended to provide purchasers a
19 recordable compact disc ("CD-R") containing a variety of counterfeit Adobe software titles.

20 g. Defendant cashed the money orders sent by purchasers of the software.

21 h. Defendant sent winning bidders recordable compact discs (CD-Rs) containing
22 counterfeit copies of multiple Adobe software titles, including Adobe Photoshop 5.0, Adobe
23 Photoshop 4.0, Adobe Photoshop LE, Adobe Illustrator 8.0, Adobe Pagemaker 6.5, Adobe Premiere
24 5.1, Adobe Premiere 4.2, Adobe Imagestyler, and Adobe Pagemill 3.0.

25 i. Defendant enclosed with the CD-Rs containing the counterfeit software,
26 documentation containing the following false material statements: "the following software is legal
27 with valid serial numbers. It is legal, full version, replacement software for software that was lost
28 in a Hollywood Studio Fire!" and "BY FEDERAL LAW ADOBE HAS TO ALLOW YOU TO

1 REGISTER THIS PRODUCT."

2 j. When certain victims contacted the defendant because the software they had
3 received was not the legitimate software for which they had paid, the defendant made false material
4 representations about the legitimacy of the software and the reasons it appeared counterfeit and could
5 not be registered with Adobe.

6
7 COUNT ONE (17 U.S.C. § 506(a)(1), 18 U.S.C. § 2319(b)(1) – Copyright Infringement)

8 3. Paragraphs One and Two are realleged and incorporated in Count One.

9 4. On or about and between January 21, 2001, and July 20, 2001, in the Northern
10 District of California and elsewhere, the defendant

11 ERIC JAMES NIEMI,
12 a/k/a Scott Falco,
a/k/a Erik Knight,

13 did willfully and for the purpose of commercial advantage and private financial gain infringe the
14 copyright of copyrighted works, to wit: Adobe Photoshop 5.0, Adobe Photoshop 4.0, Adobe
15 Photoshop LE, Adobe Illustrator 8.0, Adobe Pagemaker 6.5, Adobe Premiere 5.1, Adobe Premiere
16 4.2, and Adobe Pagemill 3.0; by reproducing and distributing during a 180-day period at least ten
17 (10) unauthorized copies of copyrighted works which have a total retail value of at least \$2500, in
18 violation of Title 17, United States Code, Section 506(a)(1) and Title 18 United States Code, Section
19 2319(b)(1).

20
21 COUNTS TWO AND THREE (18 U.S.C. § 1341 – Mail Fraud)

22 5. Paragraphs One and Two are realleged and incorporated in Counts Two and Three.

23 6. On or about the dates set forth below, within the Northern District of California and
24 elsewhere, the defendant

25 ERIC JAMES NIEMI
26 a/k/a Scott Falco,
a/k/a Erik Knight,

27 having devised and intended to devise the aforesaid scheme and artifice to defraud, and for obtaining
28 money by means of false and fraudulent pretenses, representations, and promises, for the purpose
of executing such scheme and artifice and attempting to do so, did knowingly cause CD-Rs

INDICTMENT

containing counterfeit software to be mailed to the persons below, in violation of Title 18, United States Code, Section 1341:

Count	Approximate Date	Sender	Receiving Address
3.	03/29/2001	SF P.O. Box 251786 LA CA 90025	Dan Rorabaugh 755 Mendocino Way Morgan Hill, California 95037
4.	11/29/2000 9/11/2000 AUSA	Erik Knight P.O. Box 251281 LA CA 90025	Mayberry Café 78 West Main Street Danville, Indiana 46122

COUNTS FOUR AND FIVE (18 U.S.C. § 1341 – Wire Fraud)

7. Paragraphs One and Two are realleged and incorporated in Counts Four and Five.

8. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant

ERIC JAMES NIEMI,
a/k/a Scott Falco,
a/k/a Erik Knight,

having devised and intended to devise the aforesaid scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, writings, signs, and signals for the purpose of executing such scheme and artifice as

follows in violation of Title 18, United States Code, Section 1343:

Count	Approximate Date	Sender	Recipient	Contents
4.	06/04/2000	eBay San Jose, California	Candace Ferguson Malvern, Pennsylvania	Notification of successful auction completion
5.	03/06/2001	Scott Falco Los Angeles, California (via America Online Vienna, Virginia)	Gregory Crabb San Francisco, California (via usa.net Colorado Springs, Colorado)	Solicitation for purchase of Adobe Photoshop 5.0

DATED:

11/27/2001

A TRUE BILL.

FOREPERSON

DAVID W. SHAPIRO
United States Attorney

ELIZABETH DE LA VEGA
Chief, San Jose Division

(Approved as to form:

AUSA Scott Frewing